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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,332	12/30/2003	Daniel F. Justin	13447.42	9889

7590 09/17/2008  
DANA L. TANGREN  
WORKMAN NYDEGGER  
1000 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UT 84111

EXAMINER
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SWIGER III, JAMES L

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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09/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/749,332

**Applicant(s)**

JUSTIN ET AL.

**Examiner**

JAMES L. SWIGER III

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 July 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-20 and 30-46 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-8, 10-20 and 30-46 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 11/2/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/8/2008 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6, 10, and 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Trott et al. (US Patent 5,154,720). Trott et al. (hereafter "Trott") discloses a guide assembly for forming a tunnel comprising a brace (Fig. 1) having a first end (14/20) and a second end (12), a template (17) that comprises a tip and is mounted on the first end of the brace. The template is adapted to rest on a lateral or medial facet at a proximal end of the tibia. With regards functional limitations including where the template is adapted to be placed, the device requires only the ability to perform the given function. The template is also further capable of being able to move only in a linear manner. Because the template curves upward from the prospective in Fig. 2, it is

considered to move in a direction substantially parallel to a curve at the first end of the guide device. The end of the template portion extends what is considered an end of the brace at 18/20. Portion 18 extends into the end of the brace and allows the template (17) to move only from a first end, and its movement is considered linear. Though the template slides outward, the general movement of the template portion is in a linear fashion. Trott also discloses a tubular guide sleeve (30/32) that is selectively biased against a certain side of a tibia when the template is in a cross position. The assembly further has a generally U-shaped cross section and the template is considered 'telescopically mounted.' The tubular guide sleeve also has teeth (see Fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5, 8, 12-19, 30-39 and 41-42, 46 rejected under 35 U.S.C. 103(a) as being unpatentable over Trott in view of Pinczewski (WO 01/66022 A1). Trott discloses the claimed invention except for the template being a low-profile plate with a projection and a constricted stem. Pinczewski discloses a template portion (see Fig. 27a) that is a plate base portion (158). The plate further has a projection (174) that can help guide the assembly in forming a tunnel. Even if this portion were removed as shown in fig. 31, 160 would still be considered a projection to help guide the template. There is also a constricted stem between 158 and 154. The overall shape of the template allows for

better fitting on the top of a bone, or more particularly a tibia, at a surgical site. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Trott having at least the template being a low-profile plate with a projection and a constricted stem to allow the template to better fit within the target bone area, so the guide device can have greater accuracy when drilling a bone tunnel.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trott '720 in view of Walt et al. (US Patent 4,920,958). Trott disclose the claimed invention except for a guidewire rotatably disposed within the two-part guide sleeve. It is noted that in Trott, the sleeve 30/32 maybe considered two parts, as 32 is placed inside of 30, which may also be considered a sleeve portion. In modifying Trott, Walt et al. disclose that the guide device is designed for use with guide wires and use of the wire is inherent in the reference itself. See also Columns 2 and 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Trott having at least a sleeve for disposing a guidewire as taught by Walt to better guide and secure the device to the tibia for forming a tunnel.

Claims 20 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Trott in view of Pinczewski as applied to claims 20 and 40 above, and further in view of Walt et al. '958. The combination of Trott and Pinczewski disclose the claimed invention except for a guidewire rotatably disposed within the two-part guide sleeve. It is noted that in Trott, the sleeve 30/32 maybe considered two parts, as 32 is placed inside of 30, which may also be considered a sleeve portion. In

modifying Trott, Walt et al. disclose that the guide device is designed for use with guide wires and use of the wire is inherent in the reference itself. See also Columns 2 and 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Trott and Pinczewski having at least a sleeve for disposing a guidewire as taught by Walt to better guide and secure the device to the tibia for forming a tunnel.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-8, 10-20 and 30-46 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER III whose telephone number is (571)272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L SWIGER/  
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733